

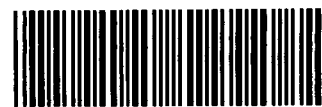
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REGIONAL HEARING CLERK  
EPA REGION VI

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IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA REGION 6 HEARING CLERK
	)	CERCLA Docket No. 6-03-98
	)	
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

## **I. JURISDICTION**

1. This Agreement is entered into pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (May 11, 1994). That authority was further delegated to the Director, Superfund Division, by EPA Regional Delegation No. R6-14-14-D (August 4, 1995).

2. This Agreement is made and entered into by EPA and the Settling Parties listed in Appendix A to this Agreement ("Settling Parties") and the U.S. Department of Defense ("Settling Federal Agency"). Each Settling Party and the Settling Federal Agency consent to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Agreement concerns the JC Pennco Waste Oil Services Site ("Site") located in San Antonio, Bexar County, Texas. The EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing this response action, EPA incurred response costs at or in connection with the Site.

6. The EPA alleges that Settling Parties and the Settling Federal Agency are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

7. The EPA, the Settling Parties and the Settling Federal Agency desire to resolve Settling Parties' and the Settling Federal Agency's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

8. This Agreement shall be binding upon EPA, upon the Settling Federal Agency and upon Settling Parties and their heirs (if any), successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).<sup>1</sup>

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<sup>1</sup> The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lowercase letter.

g. "Parties" shall mean EPA, the Settling Parties and the Settling Federal Agency.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice (DOJ) on behalf of EPA has paid at or in connection with the Site through December 31, 1998, plus accrued Interest on all such costs through such date.

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Federal Agency" shall mean the U.S. Department of Defense and any successor departments, agencies or instrumentalities of the United States.

k. "Settling Parties" shall mean those parties identified in Appendix A.

l. "Site" shall mean the JC Pennco Waste Oil Services Superfund site, encompassing approximately five acres, located at 4927 Higdon Road in the City of San Antonio, Bexar county, Texas, at Latitude 29°19'15" North and Longitude 98°23'30" West and designated by the property description included in Appendix B.

m. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

#### **V. REIMBURSEMENT OF RESPONSE COSTS**

10. Within 30 days of the effective date of this Agreement, the Settling Parties shall pay to the EPA Hazardous Substance Superfund \$413,851.70 in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.

11. Each Settling Party shall pay its Settlement Amount by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each Settling Party shall reference the "JC Pennco Waste Oil Services Site (06BA), CERCLIS #: TXD982814162," the name and address of the Settling Party, and the words "EPA Docket Number CERCLA 6-05-98," on each

check, and each Settling Party shall send its check to:

EPA Superfund -JC Pennco Waste Oil Services Site (06BA)  
CERCLIS #: TXD982814162  
Superfund Accounting  
P.O. Box 360582M  
Pittsburgh, Pennsylvania 15251  
ATTN: COLLECTION OFFICER FOR SUPERFUND

12. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Chief, Superfund Cost Recovery Section (6SF-AC)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

12.1 As soon as reasonably practicable after the effective date of this Agreement, and consistent with Subparagraph 12.1(a)(ii), the Settling Federal Agency shall:

a. (i) Pay to the EPA Hazardous Substance Superfund \$45,148.30, in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.

(ii) If the payment to the EPA Hazardous Substances Superfund required by this subparagraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section.

12.2 The Parties to this Agreement recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

## **VI. FAILURE TO COMPLY WITH AGREEMENT**

13. In the event that any payment required by Paragraph 10 is not made when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. If any amounts due to EPA under Paragraph 10 are not paid by the required date (a Settling Party's payment is late if the postmark date of a payment is later than 30 days after the effective date of the Agreement), Settling Parties shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, the following amounts per day that such payment is late:

<u>Amount Per Day</u>	<u>Number of Days Late</u>
1% of the amount listed in Paragraph 10.	1 through 7 days
2% of the amount listed in Paragraph 10.	8 days and beyond

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 11 and 12.

16. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. The obligations of Settling Parties to pay amounts owed to EPA under this Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Agreement, the remaining Settling Parties shall be responsible for such payments.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

## **VII. COVENANTS BY EPA**

20. Except as specifically provided in Paragraph 21 (Reservations of Rights by EPA), EPA covenants not to sue Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Reimbursement of Response Costs) and Section VI, Paragraphs 13 (Interest on Late Payments) and 14 (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

20.1 Except as specifically provided in Paragraph 21 (Reservation of Rights by EPA), EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Paragraph 12.1. This covenant is conditioned upon the satisfactory performance by the Settling Federal Agency of its obligations under this Agreement. This covenant extends only to the Settling Federal Agency and does not extend to any other person.

## **VIII. RESERVATIONS OF RIGHTS BY EPA**

21. The covenants by EPA set forth in Paragraphs 20 and 20.1 do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties and the Settling Federal Agency with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Parties or the Settling Federal Agency to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial,

civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

#### **IX. COVENANTS BY SETTLING PARTIES AND SETTLING FEDERAL AGENCY**

23. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23.1. The Settling Federal Agency hereby agrees not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law with respect to Past Response Costs or this Agreement. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by the Settling Federal Agency in the performance of its duties (other than pursuant to this Agreement) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 CFR 300.700(d).

#### **X. SETTLING PARTIES WAIVER OF CLAIMS AGAINST CERTAIN PARTIES**

25. Settling Parties agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. any person (i) whose liability to Settling Parties with respect to the Site is based solely on CERCLA §§ 107(a)(3) or (4), 42 U.S.C. §§ 9607(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal



or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property; and

b. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA §§ 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 110 gallons or less of liquid materials containing hazardous substances, or 200 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

26. For the purpose of this Agreement, the term "Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

27. For the purpose of this Agreement, "Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

28. For the purpose of this Agreement, "Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

29. For the purpose of this Agreement, "Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

30. For the purpose of this Agreement, "Small Business" shall mean any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 et seq.).

31. For the purpose of this Agreement, "Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

32. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The EPA, Settling Parties and the Settling Federal Agency each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

33. The EPA, Settling Parties and the Settling Federal Agency agree that the actions undertaken by Settling Parties and the Settling Federal Agency in accordance with this Agreement do not constitute an admission of any liability by any Settling Party or the Settling Federal Agency. Settling Parties and the Settling Federal Agency do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

34. The Parties agree that Settling Parties and the Settling Federal Agency are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs. The "matters addressed" in this Agreement do not include those response costs which are not Past Response Costs, nor do they include response costs or response actions as to which the United States including without limitation EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Parties or the Settling Federal Agency coming within the scope of such reservations.

35. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

36. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 20.

## **XII. RETENTION OF RECORDS**

37. Until 10 years after the effective date of this Agreement, each Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

38. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Parties shall deliver any such records or documents to EPA. Settling Parties may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

39. By signing this Agreement, each Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation,

treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

39.1. The Settling Federal Agency acknowledges that it (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. § 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### **XIII. NOTICES AND SUBMISSIONS**

40. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA, Settling Parties and the Settling Federal Agency:

**As to EPA:**

Chief, Superfund Cost Recovery Section (6SF-AC)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733; and

James E. Costello (6RC-S)  
Superfund Branch  
1445 Ross Ave.  
Dallas, TX 75202-2733

**As to Settling Parties:**

The name and the address of the notification contact person is listed on the signature page for

each Settling Party respectively.

As to Settling Federal Agency:

The name and the address of the notification contact person is listed on the signature page for the Settling Federal Agency.

#### **XIV. INTEGRATION/APPENDICES**

41. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A is a list of the names of the Settling Parties;

Appendix B is a legal description of the Site.

#### **XV. PUBLIC COMMENT**

42. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

#### **XVI. ATTORNEY GENERAL APPROVAL**

43. This Agreement is subject to the approval of the Attorney General or her designee in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

#### **XV. EFFECTIVE DATE**

44. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 42 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

U.S. EPA Region 6  
CERCLA Docket No. 6-05-98

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

*Pamela Phillips*  
Myron O. Knudson, P.E.  
Director, Superfund Division  
Region 6

*3/10/99*  
[Date]

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA Region 6
	)	CERCLA Docket No. 6-05-98
	)	
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

**APPROVAL OF THE DEPARTMENT OF JUSTICE**

The United States Department of Justice hereby approves the proposed Agreement, CERCLA Docket Number 6-05-98 between EPA and the Settling Parties listed in Appendix A thereto.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA Region 6
	)	CERCLA Docket No. 6-05-98
	)	
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar County, Texas:

FOR SETTLING PARTY: \_\_\_\_\_  
 Name of Settling Party (i.e., name of company or other entity)  
 \_\_\_\_\_  
 Address

By: \_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification contact person shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the Settling Party who has signed above:

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Address



IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA Region 6
	)	CERCLA Docket No. 6-05-98
	)	
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING FEDERAL AGENCY enters into this Agreement in the matter of CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar County, Texas:

FOR SETTLING FEDERAL AGENCY: U.S. DEPARTMENT OF DEFENSE  
Name of Federal Agency

\_\_\_\_\_  
Address

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification contact person shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the Settling Federal Agency who has signed above:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA Region 6
	)	CERCLA Docket No. 6-05-98
	)	
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

**Appendix A**  
**LIST OF SETTLING PARTIES**

Ashley Salvage Company, Inc.  
The Coleman Company, Inc.  
The Dee Howard Company  
Defense Reutilization and Marketing Service  
Fairchild Aircraft Incorporated  
Fairchild Gen-Aero, Inc.  
Senior Flexonics, Inc.  
Via Metropolitan Transit Authority  
and Victor Service Center, Inc.

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA Region 6
	)	CERCLA Docket No. 6-05-98
	)	
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

### Appendix B

#### LEGAL DESCRIPTION OF THE JC PENNCO WASTE OIL SERVICES SITE

**BEGINNING**            At the Northeast corner of the present intersection of Higdon Rd. and W.W. White Rd. Right of Way;

**THENCE**                South 85 deg., 40 min. East 2,035.7' along the North Right of way line of Higdon Rd. to an iron set at a point that is North 85 deg., 40 min. West 154.3' from the Southeast corner of aforementioned 17.7012 acre tract for the Southwest corner of this tract being herein described, and the point of beginning for this survey;

**THENCE**                North 04 deg., 42 min., 46 sec. East 1,384.75' to an Iron pin set on the North line of said 17.7012 acre tract for the Northwest corner of this tract;

**THENCE**                North 75 deg., 17' East 163.63' to an Iron pin found at the Northeast corner of said 17.7012 acre tract for the Northeast corner of this tract;

**THENCE**                South 04 deg., 42 min., 46 sec. West 1,438.82' along the East boundary line of said 17.7012 acre tract to an Iron pin found on the North Right of Way line of Higdon Rd. at the Southeast corner of     said 17.7012, for the Southeast corner of this therein described tract;

**THENCE**                North 85 deg., 40 min. West 154.3' along the North Right of way line of Higdon Rd., to the place of beginning as surveyed on the ground by Victor Seguin, State of Texas Registered Public Surveyor #1776, on the 3rd day August 1983.

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
JC PENNCO WASTE OIL SERVICES SITE	)	
SAN ANTONIO, BEXAR COUNTY, TEXAS	)	U.S. EPA Region 6
	)	CERCLA Docket No. 6-05-98
SETTLING PARTIES LISTED IN APPENDIX A	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar County, Texas:

FOR SETTLING PARTY: THE DEE HOWARD COMPANY

Name of Settling Party (i.e., name of company or other entity)

P.O. BOX 469001, SAN ANTONIO, TX 78246

Address

By: 

Signature

2-16-99

Date

PIER L. UGHI

Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification contact person shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the Settling Party who has signed above:

PIER L. UGHI

Name

P.O. BOX 469001, SAN ANTONIO, TX 78246

Address

Received Feb 05 04:20PM (07/30) on FAX ALAS Line (4) for 'DT0205' MCKINYS Printed 02/05/99 10:00 # Pg 20/24  
02/05/99 16:20 FAX 210 224 2028 AKIA Group - SA (F5) 02/05/99

IN THE MATTER OF:

JC PENNCO WASTE OIL SERVICES SITE  
SAN ANTONIO, BEXAR COUNTY, TEXAS

SETTLING PARTIES LISTED IN APPENDIX A

) AGREEMENT FOR RECOVERY  
) OF PAST RESPONSE COSTS) U.S. EPA Region 6  
) CERCLA Docket No. 6-05-98) PROCEEDING UNDER SECTION  
) 122(h)(1) OF CERCLA  
) 42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of  
CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar  
County, Texas:

FOR SETTLING PARTY: SENIOR FLEXONICS

Name of Settling Party (i.e., name of company or other entity)

2400 LONGHORN INDUSTRIAL DRIVE

Address

By:

Signature

Date

GREG PERKINS

Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification  
contact person shall constitute complete satisfaction of any written notice requirement of this  
Agreement with respect to the Settling Party who has signed above:

SAME

Name

Address

IN THE MATTER OF:

JC PENNCO WASTE OIL SERVICES SITE  
SAN ANTONIO, BEXAR COUNTY, TEXAS

SETTLING PARTIES LISTED IN APPENDIX A

§ AGREEMENT FOR RECOVERY  
§ OF PAST RESPONSE COSTS  
§  
§ U.S. EPA Region 6  
§ CERCLA Docket No. 6-05-98  
§  
§ PROCEEDING UNDER SECTION  
§ 122(h)(1) OF CERCLA  
§ 42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of  
CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar  
County, Texas:

FOR SETTLING PARTY: Fairchild Aircraft Incorporated  
P.O. Box 790490  
San Antonio, Texas 78279-0490

By: James E. Walsh, III  
JAMES E. WALSH, III

As provided in paragraph 60 of the Agreement, written notice to the following notification  
contact person shall constitute complete satisfaction of any written notice requirement of  
this Agreement with respect to the Settling Party who has signed above:

James E. Walsh, III  
Fairchild Aircraft Incorporated  
P.O. Box 790490  
San Antonio, Texas 78279-0490

238557.01

SENT BY: EXECUTIVE OFFICES

12 0-99 ; 0:40PM ; FAIRCHILD AIRCRAFT  
WAS IN MALLIN FIELD

004/004  
34011.4  
0002

**IN THE MATTER OF:**

**JC PENNCO WASTE OIL SERVICES SITE  
SAN ANTONIO, BEKAR COUNTY, TEXAS**

## SETTLING PARTIES LISTED IN APPENDIX A

## AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

**U.S. EPA Region 6**  
**CERCLA Docket No. 6-05-98**

PROCEEDING UNDER SECTION  
122(h)(1) OF CERCLA  
42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA 6-05-98, relating to the JC Penney Waste Oil Services Site, San Antonio, Bexar County, Texas:

FOR SETTLING PARTY: Fairchild Gen-Aero, Inc.  
P.O. Box 790490  
San Antonio, Texas 78279-0490

By \_\_\_\_\_

**JAMES E. WALSH, III**

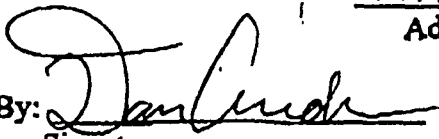
As provided in paragraph 40 of the Agreement, written notice to the following notification contact person shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the Settling Party who has signed above:

James E. Walsh, III  
Fairchild Gen-Aero, Inc.  
P.O. Box 780480  
San Antonio, Texas 78279-0490

IN THE MATTER OF: ) AGREEMENT FOR RECOVERY  
 ) OF PAST RESPONSE COSTS  
JC PENNCO WASTE OIL SERVICES SITE )  
SAN ANTONIO, BEXAR COUNTY, TEXAS ) U.S. EPA Region 6  
 ) CERCLA Docket No. 6-05-98  
 )  
SETTLING PARTIES LISTED IN APPENDIX A ) PROCEEDING UNDER SECTION  
 ) 122(h)(1) OF CERCLA  
 ) 42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of  
CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar  
County, Texas:

FOR SETTLING PARTY: Ashley Salvage Company, Inc.  
Name of Settling Party (i.e., name of company or other entity)  
4918 Roosevelt, San Antonio, Texas 78214  
Address

By:   
Signature

2/8/99  
Date

Dan Andrews  
Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification  
contact person shall constitute complete satisfaction of any written notice requirement of this  
Agreement with respect to the Settling Party who has signed above:

Dan Andrews  
Name

10100 Reunion Pl, Suite 600, San Antonio 78216  
Address



IN THE MATTER OF:

JC PENNCO WASTE OIL SERVICES SITE  
SAN ANTONIO, BEXAR COUNTY, TEXAS

SETTLING PARTIES LISTED IN APPENDIX A

) AGREEMENT FOR RECOVERY  
) OF PAST RESPONSE COSTS) U.S. EPA Region 6  
) CERCLA Docket No. 6-05-98) PROCEEDING UNDER SECTION  
) 122(h)(1) OF CERCLA  
) 42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of  
CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar  
County, Texas:

FOR SETTLING PARTY:

VIA Metropolitan Transit

Name of Settling Party (i.e., name of company or other entity)

P.O. Box 12489, 800 W. Myrtle, San Antonio, Texas  
Address 78212

By:

Signature

February 9, 1999  
DateJohn M. Milam

Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification  
contact person shall constitute complete satisfaction of any written notice requirement of this  
Agreement with respect to the Settling Party who has signed above:

Mr. John M. Milam

Name

P.O. Box 12489, 800 W. Myrtle, San Antonio, Tx 78212

Address

IN THE MATTER OF:

JC PENNCO WASTE OIL SERVICES SITE  
SAN ANTONIO, BEXAR COUNTY, TEXAS

SETTLING PARTIES LISTED IN APPENDIX A

) AGREEMENT FOR RECOVERY  
) OF PAST RESPONSE COSTS  
)  
) U.S. EPA Region 6  
) CERCLA Docket No. 6-05-98  
)  
) PROCEEDING UNDER SECTION  
) 122(h)(1) OF CERCLA  
) 42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of  
CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar  
County, Texas:

FOR SETTLING PARTY: The Coleman Company, Inc.Name of Settling Party (i.e., name of company or other entity)2381 Executive Center Drive, Boca Raton, Florida 33431AddressBy: Janet Kelly

Signature

2/9/99

Date

Janet G. Kelley, Vice President and General Counsel  
Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification  
contact person shall constitute complete satisfaction of any written notice requirement of this  
Agreement with respect to the Settling Party who has signed above:

Joseph R. Brendel, Esquire

Name

Thorp Reed & Armstrong LLPOne Riverfront Center, 20 Stanwix Street, Pittsburgh, PA 15222-4895Address

## SETTLING PARTIES LISTED IN APPENDIX A

## AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

**U.S. EPA Region 6  
CERCLA Docket No. 6-05-98**

**PROCEEDING UNDER SECTION  
122(h)(1) OF CERCLA  
42 U.S.C. § 9622(h)(1)**

**THE UNDERSIGNED SETTLING PARTY** enters into this Agreement in the matter of CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar County, Texas:

FOR SETTLING PARTY: Ashley Salvage Company, Inc.

Name of Settling Party (i.e., name of company or other entity)

4918 Roosevelt + San Antonio, Texas 78214

### Address

**By:**

**Signature**

Date \_\_\_\_\_

Dan Andrews

**Print name of Signatory**

**As provided in paragraph 40 of the Agreement, written notice to the following notification contact person shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the Settling Party who has signed above:**

Dan Andrews

Name \_\_\_\_\_

10100 Reunion Pl, Suite 600 San Antonio TX 78216

## Address

IN THE MATTER OF:

JC PENNCO WASTE OIL SERVICES SITE  
SAN ANTONIO, BEXAR COUNTY, TEXAS

SETTLING PARTIES LISTED IN APPENDIX A

) AGREEMENT FOR RECOVERY  
) OF PAST RESPONSE COSTS

) U.S. EPA Region 6  
) CERCLA Docket No. 6-05-98  
)

) PROCEEDING UNDER SECTION  
) 122(h)(1) OF CERCLA  
) 42 U.S.C. § 9622(h)(1)

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of  
CERCLA 6-05-98, relating to the JC Pennco Waste Oil Services Site, San Antonio, Bexar  
County, Texas:

FOR SETTLING PARTY:

Victor's Service Center

Name of Settling Party (i.e., name of company or other entity)

Address

By:

[Signature]  
Signature

11<sup>th</sup> Feb 99  
Date

VICTOR P. D'SOUZA

Print name of Signatory

As provided in paragraph 40 of the Agreement, written notice to the following notification  
contact person shall constitute complete satisfaction of any written notice requirement of this  
Agreement with respect to the Settling Party who has signed above:

Ernie L. Glenn

Name

1004 S. St. Mary's

Address

SAN Antonio, Texas 78205